IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.480 DBA of 1994
Date of decision:25.5.2007

State of Haryana

…..Appellant

v.

Jarnail Singh

…..Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr. PS Sullar, DAG, Haryana, for the appellant.

Mr. Vinod Ghai, Advocate, for the respondent.

JUDGMENT:

The State is aggrieved by the acquittal of the respondent of the charge under section 302 IPC.

Case of the prosecution is that Tej Kaur was mother of respondent Jarnail Singh, who is the eldest of the four brothers and three sisters in the family. Naib Singh PW3 is brother of the respondent and Jaswinder Kaur PW4 is sister of the respondent. The family owned 15 acres of land at Village Kalawar, District Ambala. Six acres of land was in the name of the deceased and the remaining land was in the name of four brothers jointly. The accused Jarnail Singh and his brother Hakam Singh had sold 2-1/2 acres of land of the share of the deceased. The remaining land was being cultivated by the accused. Other three brothers were

cultivating land at Village Mandi, District Patiala. Against the land in District Patiala, loan had been taken for purchase of tractor and to recover the same, suit had been filed by the bank. An understanding was arrived at that land standing in the name of the deceased be sold for payment of loan and for performing the marriage of Jaswinder Kaur PW4. On 14.5.1992, Naib Singh PW3 and Jaswinder Kaur PW4 visited Kalawar and stayed in the family house. On the next day, their mother also came. The accused took an objection to the proposal for sale of the land in Village Kalawar and suggested that land in Village Mandi be sold. On the night of 15.5.1992 when the deceased, Naib Singh and Jaswinder Kaur were sleeping on the roof of the house, the accused came to the roof by climbing the stairs and was armed with a 'lathi' with steel blade. He gave blow with the weapon on the face of the deceased Tej Kaur. Naib Singh woke up and saw the occurrence. The accused gave further two blows on her forehead - one blow in the chest region and one blow on her arm. She raised alarm. Jaswinder Kaur also got up. Jarnail Singh declared that he was finishing the matter for ever as two and a half acres of land had earlier been sold and his share not given. Tej Kaur died. Jarnail Singh ran away alongwith the weapon. Naib Singh PW3 accompanied by Lajja Ram Chowkidar was going for lodging the FIR and met Jaspal Singh ASI PW6 who recorded his statement Ex.PE which led to

registration of FIR. ASI Jaspal Singh PW6 went to the place of occurrence, prepared inquest report and rough site plan and picked up blood stained earth and sent the dead body for post-mortem examination.

Dr. R.K.Patnaik, PW1 conducted post mortem examination and opined that cause of death was due to shock and hemorrhage as a result of injuries, which were sufficient to cause death in the ordinary course of nature and were ante-mortem. He opined that four injuries were by sharp-edged weapon and one by 'lathi'. Out of the four injuries which were by sharp-edged weapon, two could not be possible by 'lathi'.

The accused was arrested and made disclosure statement Ex.PN to the effect that he had kept concealed 'lathi' and the same was recovered at his instance.

After competition of investigation, the accused was challaned. The accused took the plea that he had purchased a tractor which was being demanded by the other brothers. He was not being allowed to cultivate the land. On account of this, an altercation took place. He denied having committed the offence.

After considering the evidence on record, the trial court held that the case of the prosecution was not proved beyond reasonable doubt and acquitted the respondent. The substance of reasons given by the trial court for acquittal is as under:-

(i)The evidence of PWs Naib Singh PW3 and Jaswinder Kaur PW4 was not truthful on account of material contradictions. According to medical evidence, three incised wounds were found on the deceased while in the FIR, the weapon of offence was alleged to be 'lathi' (stick). Even in the statement under section 161 Cr.PC Ex.DA made by Jaswinder Kaur PW4, only stick was alleged to have been used. Only in court, the weapon was described as 'lathi' fitted with blade.

(ii)The weapon of offence recovered in pursuance of the disclosure statement was produced in court and the same did not have any blade.

(iii)According to Naib Singh PW3, understanding had already been reached for selling the land standing in the name of the deceased and in that case, there was no reason for the accused to be aggrieved by the sale made earlier. Statement of Naib Singh PW3 in cross-examination was that proposal was for sale of land which was mortgaged with possession. In that case, there was absolutely no reason for the accused to be

aggrieved.

We have heard learned counsel for the parties and perused the record.

The trial court has considered the evidence on record and found the version given by alleged eye witnesses Naib Singh PW3 and Jaswinder Kaur PW4 to be not reliable. The view taken by the trial court for acquittal, in the circumstances of the case, cannot be held to be perverse and is not liable to be interfered with merely because a different view may also be possible.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court

> holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

In view of above, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

(M.M.S.Bedi)
Judge

May 25, 2007
'gs'